Supreme Court, U. S.
FILED
JUL 14 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1976

No. 75-1733

SALLY LEE SIMON,

Petitioner,

vs.

CHARLES SIMON,

Respondent.

RESPONDENT'S BRIEF

Of Counsel
MEEHAN & STOELKER
1400 South Penn Square
Philadelphia, Pa. 19102

JACK D. BURRIS
Attorney for Respondent
420 Lincoln Road
Miami Beach, Fla. 33139

MIAMI REVIEW — 371-4853 — 377-3721

TABLE OF CONTENTS

	Page
INTRODUCTION AND CORRECTION OF PETITIONER'S FACTUAL STATEMENTS	2
SUMMARY OF RESPONDENT'S ARGUMENT	10
ARGUMENT	
RESPONDENT'S POINT I	
THE PETITION FOR WRIT OF CERTIORARI HEREIN SHOULD BE DISMISSED BECAUSE IT WAS NOT TIMELY FILED.	12
RESPONDENT'S POINT II	
THE PETITION FOR CERTIORARI SHOULD BE DISMISSED BECAUSE IT IS PATENT THAT NO REAL AND SUBSTANTIAL FEDERAL QUESTION EXISTS OR WAS DETERMINED BY THE FLORIDA COURT.	16

TABLE OF CONTENTS (continued)

Page

RESPONDENT'S POINT III

THE FLORIDA COURTS' JUDGMENT OF DIVORCE WAS CONCLUSIVE ON THE QUESTION OF THE PROPERTY RIGHTS OF THE PARTIES THERETO, AND RES JUDICATA THEREOF; AND A SUBSEQUENT FLORIDA INJUNCTION AGAINST FURTHER LITIGATION IN ANOTHER STATE INVOLVING CLAIMS TO THOSE SAME PROPERTY RIGHTS IS PROPERLY ISSUED, WHERE THE FLORIDA COURT HAS IN PERSONAM JURISDICTION OF THE PARTIES. 20

CONCLUSION 44

CERTIFICATE OF SERVICE 45

TABLE OF CASES CITED

Page

Abrams vs. Van Schaick,
293 U.S. 188, 55 S.Ct. 135 16

Allis vs. Allis,
(U.S.C.A. 5th Cir. 1967) 378 F.2d 721 Cert. Den. 389 U.S. 953, 88 S.Ct. 337 30-32

Ansin vs. Thurston,
(Fla. 1958) 101 So.2d 808 13

Argersinger vs. Hamlin,
(Fla. 1972) 407 U.S. 25, 38, 92 S.Ct. 2006, 2013 18

Barber vs. Barber,
(Cal. 1958) 331 P.2d 628 27-28

Beebe vs. Brownlee,
(1951 Ohio) 62 Ohio L.Abs. 377, 110 NE 2d 64; Affd. 63 Ohio L. Abs. 380, 381, 109 NE 2d 528 38

Bowen vs. Bowen,
(Iowa 1935) 258 NW 882 38

Bozarth vs. Bozarth,
(La. 1967) 199 So.2d 544 38

Cooper vs. Cooper,
(Fla. 1954) 69 So.2d 881 41

TABLE OF CASES (cont.)

	Page
Cuevas vs. Cuevas, (Miss. 1966) 191 So.2d 843	38, 39
Department of Banking vs. Pink, 317 U.S. 264, 63 S.Ct. 233	14
Dunlap vs. Byers, (1896) 110 Mich. 109, 67 NW 1067	34
Ehrlich vs. Cohn, (NY 1955) 145 NYS 2d 117	38
Fall vs. Easton, 215 U.S. 1, 30 S.Ct. 3	23-26
Finston vs. Finston, (Fla. 1948) 37 So.2d 423	41
Foster vs. Foster, (Pa.) 70 Pa. Dist. & Co. 485, 27B CJS 862	38
Gorman vs. Washington University, 316 U.S. 98, 62 S.Ct. 962	14
Henderson vs. Henderson, (Fla.App. 1969) 226 So.2d 699	41
Hicks vs. Corbett, (1955) 130 Cal.App.2d 87, 278 P.2d 77, Cert. Den. 349 U.S. 965, 72 S.Ct. 898	18-19, 39-40

TABLE OF CASES (cont.)

	Page
Higgenbotham vs. Higgenbotham, (1966) 92 NJ Super 18, 222 A 2d 120	38
Higgins, (So. Dak. 1932) 245 NW 397	38
Jones vs. Jones, (Fla.App. 1962) 140 So.2d 318	36, 38, 41
Kram vs. Kram, (N.J. 1967) 237 A.2d 271	38
MacDonald vs. Dexter, (1908) 234 Ill. 517, 85 NE 209	34
Mancini vs State, (Fla. 1975) 312 So.2d 732	13
McEachin vs. McEachin, (Fla.App. 1963) 154 So.2d 894	41
McElreath vs. McElreath, (1961) 162 Tex. 190 345 SW 2d 722	34
McRary vs. McRary, (N.C. 1948) 47 S.E.2d 27	27, 28-29
Nash vs. Florida Industrial Commission, (Fla. 1967) 389 U.S. 235, 237, 88 S.Ct. 362	13

TABLE OF CASES (cont.)

	Page
Neblett vs. Carpenter, 305 U.S. 297, 59 S.Ct. 170	16
Phoenix Fire Ins. Co. vs. Tennessee, (1896) 161 U.S. 174, 16 S.Ct. 471	18
Rozan vs. Rozan, (1957) 49 Cal.2d 322, 317 P.2d 11	34
Rozan vs. Rozan, (1964 N.D.) 129 NW 2d 694	34
Scheper vs. Scheper, 125 S.C. 89, 118 SE 178	38
Sharp vs. Sharp, (Okla. 1916) 166 P. 175	27-28
Sherrer vs. Sherrer, (1948) 334 U.S. 343, 68 S.Ct. 1087	43
Simon vs. Simon, (Fla.App. 1974) 293 So.2d 780	
Simon vs. Simon, (Fla.App. 1975) 317 So.2d 83	
Smith vs. Bollinger, (Fla.App. 1962) 137 So.2d 881	41

TABLE OF CASES (cont.)

	Page
Thompson vs. Thompson, (Fla.App. 1969) 223 So.2d 95	41
Travelers Ins. Co. vs. Fields, (U.S.D. Ct. Ky. 1971) 323 F.Supp. 387	38
Wicker vs. Wicker, (Nev. 1969) 451 P.2d 715	38
Winn vs. Strickland, (Fla. 1894) 34 Fla. 610 16 So. 606	35

OTHER AUTHORITIES

32 ALR 3rd 1338 et seq.	34
34 ALR 3rd 962 et seq.	37
27 B CJS 857 (Div. §367)	37

in the

Supreme Court

of the

United States

October Term, 1976

No. 75-1733

SALLY LEE SIMON,

Petitioner,

vs.

CHARLES SIMON,

Respondent.

RESPONDENT'S BRIEF

INTRODUCTION

CORRECTION OF PETITIONER'S FACTUAL STATEMENTS

Respondent is placed in the regrettable position of being compelled to state that a number of factual statements contained in the Petition for Writ of Certiorari and in the body of the Petitioner filed herein are inaccurate, distorted or completely dehors the record. For example, citing the pages of the Petition:

1. Page 3, first paragraph: There is no evidentiary support, either in the record submitted with the Petition, nor in any proceeding in the lower courts, for the statement that Pennsylvania courts would not accord full faith and credit to the Florida injuction, nor is there any legal precedent or authority cited to sustain that assertion.

2. Page 3, second paragraph: There is no support in the record submitted with the Petition, nor in any proceeding in the lower courts, for the statement that the Pennsylvania property owned by Respondent is valued in excess of $4,000,000.00, with annual income in excess of $400,000.00. [The only pertinent allegation is contained in the Final Judgment Dissolving Marriage (at A3)], wherein a Finding of Fact was specifically made in the divorce judgment that:

> "... the husband is the owner of ... real estate in Philadelphia, Pennsylvania ... which was stipulated to have a net value in excess of $1,000,000.00. The ... tax returns indicate actual income therefrom in excess of $20,000.00 after deducting depreciation. The testimony further established that the properties are producing a gross 'throw-off' of about $120,000.00 per year."

3. Page 3, second paragraph and at Page 10, last line:

There is no support, either by the way of initial allegation or evidence in support thereof, either in the record submitted with the Petition, or in any proceeding in the lower courts, for the statement that the Petitioner's signatures on certain deeds were forged.

There is nothing in the record to suggest the verity of this allegation. No testimony or documentation of any kind was offered to support such a contention at any phase of this case.

The Pennsylvania litigation, which was enjoined by the Florida court, does not allege fraud or forgery in any case. Those Pennsylvania cases involve deeds which were executed by the parties in 1965, 1966 and 1969, prior to the trial of their divorce action in February, 1972. Those deeds were signed by both parties and transferred properties from the husband and wife to the husband. The complaints in the Pennsylvania cases make only the following allegations with respect to those deeds:

> Case No. 410:
>
> "Plaintiff has no knowledge or awareness of ever having executed a deed with her husband conveying the aforesaid ... parcels."

Case No. 3508:

"The signature on the deed purporting to be that of the Plaintiff does not appear to be in her writing."

Case No. 4056:

"Plaintiff did not receive consideration for a conveyance of land transferred in April, 1965."

Case No. 4136:

"There was no consideration of any kind passing from husband to wife . . . nor does it appear that the signature of 'Sally Lee Simon' is in the handwriting of the wife."

Case No. 4355:

"There was a total absence of consideration passing to the wife from the husband."

The foregoing quotations are taken from certified copies of the Pennsylvania complaints which were admitted in evidence and form part of the record in the lower court proceedings which ended in the Judgment of Injunction. No evidence was submitted in the Injunction action to support those allegations. There was certainly no allegation or evidence of forgery.

4. Page 3, fourth paragraph: The allegations at the bottom of page 3 of the Petition reciting proceedings which are purported to have taken place in the Pennsylvania

courts with respect to the Pennsylvania litigation is completely dehors the record. None of those facts have ever been presented to the Florida courts. None of those allegations are supported by anything in the record presented to this Court.

5. Page 4, paragraphs three and four: The record contradicts Petitioner's statement that the Florida divorce judgment adjudicated only the Florida real estate owned by the parties.

The Final Judgment Dissolving Marriage positively adjudicated, and made a specific Finding of Fact that:

> "In addition to his interest in that residence, and its contents, the husband is the owner of a number of properties consisting of improved and unimproved real estate in Philadelphia, Pa., as designated and legally described in Plaintiff's Exhibit 1 filed in evidence, which was stipulated to have a net value in excess of $1,000,000.00." [A3]

No appeal was taken from that Judgment of Divorce.

Furthermore, the divorce action did not "proceed to final judgment without an adjudication of those property rights." That Final Judgment Dissolving Marriage recited all the proceedings taken in that action up to judgment. [A1-2] That recitation by the court in the Final Judgment Dissolving Marriage establishes:

> (a) On October 12, 1970, the wife (Petitioner here) filed an amended complaint for divorce, in which she specifically sought "adjudication

of her claim of property rights in various real properties and shopping centers in and around the City of Philadelphia, Pa." [A1, last paragraph]

(b) On November 22, 1971, the husband's (Respondent here) counterclaim for divorce was amended "by adding to the prayer for relief a prayer that the court determine the rights and interests of the parties in and to their real and personal property . . . " [A2-top paragraph]

(c) "On November 29, 1971, being 8 days before the date set for trial of the cause, the wife, . . . obtained an Order dismissing her Amended and Supplemental Complaint, and every count thereof, at her instance. That Order specifically preserved for adjudication the issues raised by husband's counterclaim". [A2 - 2nd paragraph]

(d) "The action then proceeded to trial . . . upon the husband's action for divorce . . . [and] adjudication of the rights and interests of the parties in and to their real and personal property . . . " [A2, 2nd paragraph].

The record clearly establishes, from the recitation of the Final Judgment of Divorce above noted, that on the very eve of trial the wife attempted to withdraw from the Florida court her attempt to establish a special equity or interest in the Pennsylvania property which was then owned solely by the husband, and on the very eve of the Florida trial she filed parallel complaints against that Pennsylvania real estate in the Pennsylvania courts.

The sworn Complaint for Injunction, filed by Respondent, which culminated in the Final Judgment of Injunction here on review, alleged in detail acts of extreme malice in connection with that Pennsylvania litigation, in which Petitioner's Philadelphia attorney caused attachment to issue against all of Respondent's bank accounts and construction mortgage and other loan accounts with the "stated intention of completely disrupting Charles Simon's business operations in Philadelphia and thereby 'bring him to his knees' ". Petitioner's actions included letters by Petitioner's counsel to all of the tenants of Respondent's shopping center properties in Philadelphia directing them to withhold payment of their rents. Those allegations of Respondent's sworn complaint in the Injunction action were never controverted by any admissible evidence from Petitioner.

The Pennsylvania actions were obviously instituted on the very eve of the Florida divorce trial for the purpose of whipping Respondent into submission to settlement.

But those Pennsylvania actions did not withdraw from the Florida court its jurisdiction to determine and adjudicate the property rights of the parties between themselves in the divorce case which was still before it, despite Petitioner's attempt to divert that question to Pennsylvania.

Petitioner was expressly warned in the divorce trial that if she refused to submit any evidence of her claim to the court at that time, she was proceeding at her peril and risked an adverse ruling on the question of property rights.

The Trial Judge specifically noted in his Order dated October 16, 1973, in this Injunction case, [A8]:

(1) "Both parties, here and there, were well aware that failure to adjudicate these property rights in a final judgment dissolving a marriage might bring into effect an adjudication thereof by operation of law" ' and

(2) "In said dissolution action, the undersigned having rendered said judgment, the Pennsylvania property for the purpose of the dissolution was conceded to be in the name of the husband. (Plaintiff here); and

(3) "The court, upon the evidence, did consider the husband's assets in determining alimony and child support to be paid by the husband." [A8-9]

6. Page 6, first paragraph: The bare allegation is made:

"The issues involved here were raised in the Florida proceedings."

No support or reference in support of this statement is given, in direct contravention of Supreme Court Rule 23 subd. 1 (f) which specifically requires the Statement of the Case to:

"... specify the stage in the proceedings in the court of first instance and in the Appellate Court, at which, and the manner in which, the federal

questions sought to be reviewed were raised, the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court ... with specific reference to the places in the record where the matter appears ... as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on Writ of Certiorari."

No such reference is made, nor can it be made, because neither the Appellate Court nor the court of first instance in the Florida litigation were ever advised that:

"... the validity of a treaty or statute of the United States is drawn in question or ... the validity by a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or ... any title, right, privilege or immunity as specially set up or the claim under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

as provided in Title 28, U.S. Code §1257 (3), which establishes and limits the Certiorari jurisdiction of this Court.

SUMMARY OF RESPONDENT'S ARGUMENT

1. The Petition for Writ of Certiorari should be dismissed because this case was finally and fully adjudicated by the highest court of the State of Florida in which a decision can be had, i.e., the District Court of Appeal of Florida, Third District, on July 29, 1975, and Rehearing thereafter was denied by that court on September 11, 1975.

The period of 90 days which within which to file Petition for Certiorari to this Court commenced to run from September 11, 1975. The Petition was not in fact filed with this Court until June 18, 1976, approximately nine months after the final rendition by the highest court in the State of Florida having jurisdiction over this matter.

The Petition for Writ of Certiorari filed to the Florida Supreme Court was an empty gesture because that court had no jurisdiction to review the District Court of Appeal and, in fact, dismissed that Petition for Certiorari for want of jurisdiction.

2. The Petition for Writ of Certiorari should be dismissed because it is apparent that no rule or substantial federal question exists in this case.

This case involves an injunction directed by the Florida court against its own citizens restraining one citizen of the State of Florida from suing another citizen of the State of Florida in the courts of another state upon matters which had been previously litigated and determined in a divorce action between those same parties rendered by a Florida court.

There is no question of full faith and credit involved because it is only one judgment of the State of Florida, which is being locally enforced within that state, which is before this court.

3. The Petition for Writ of Certiorari in this case should be denied because it is long established by the decisions of this court, including the case of *Fall vs. Easton*, 215 U.S. 1, 30 S.Ct. 3, upon which Petitioner erroneously relies, that the Florida court, acting in personam, may adjudicate the rights of parties before it, even though such rights relate to lands in another state.

Such decision is binding upon the parties and will be res judicata in all future litigation between them.

ARGUMENT

POINT I

THE PETITION FOR WRIT OF CERTIORARI HEREIN SHOULD BE DISMISSED BECAUSE IT WAS NOT TIMELY FILED.

The Petition for Writ of Certiorari filed herein seeks review of a Summary Judgment of Injunction, dated October 24, 1974, entered by the Circuit Court of Dade County, Florida, enjoining Petitioner from prosecuting seven actions filed by her against Respondent in Common Pleas Court of Philadelphia County, Pennsylvania, seeking a determination of property rights between the parties in real property owned by Respondent in Pennsylvania. The Injunction was issued upon the ground that the parties were citizens of the Florida court, over whom it had in personam jurisdiction, and that all property rights of the parties were conclusively determined and settled between them, under Florida law, as a result of a Final Judgment Dissolving their marriage which was entered in Florida on March 20, 1972.

That Final Judgment of Injunction was appealed to the District Court of Appeal of Florida, Third District, and was affirmed by that court on July 29, 1975 [A-17]. Petition for Rehearing was denied on September 11, 1975. [A18]. That judgment of affirmance by the District Court of Appeal of Florida, rendered on July 29, 1975, on which rehearing was denied on September 11, 1975, was rendered by the highest court of the state in which a decision can be had, as required by 28 U.S.C. §1257.

Petitioner was allowed 90 days after September 11, 1975, within which to file the Petition for Writ of Certiorari to this Court. That time expired on December 10, 1975. The Petition herein was not filed until May 28, 1976 and is therefore not timely filed.

The District Court of Appeal of Florida is the highest court of the State of Florida in which a decision can be had in this case. Review of decisions of the District Courts of Appeal of Florida are strictly limited. Beyond those specific cases announced in Article 5, §3 of the Florida Constitution, the Supreme Court of Florida has no jurisdiction to review decisions of lower courts, including the District Court of Appeal. *Ansin v. Thurston*, (Fla. 1958) 101 So.2d 808; *Mancini v. State*, (Fla. 1975) 312 So.2d 732.

This Court has recognized the limited jurisdiction of the Florida Supreme Court with respect to decisions of the District Courts of Appeal of Florida in:

> *Nash vs. Florida Industrial Commission, Fla.* 1967, 389 U.S. 235, 237, 88 S.Ct, 362, 365.

In *Nash vs. Florida Industrial Commission*, supra, this Court ruled:

> "The Florida Supreme Court seems to have decided that it lacks jurisdiction by appeal to consider per curiam denials of certiorari by the Florida District Court of Appeal. Callendar v. State, Fla., 181 So. 2d 529. *** Thus, it is impossible for us to say that under Florida law petitioner here had any right to call upon the State Supreme Court for review. In these circumstan-

ces, we therefor are unable to say that the District Court of Appeal was not the highest court in Florida wherein a decision could be had as required by 28 U.S.C. §1257(3)."

In *Gorman vs. Washington University*, 316 U.S. 98, 62 S.Ct. 962, this Court dismissed a Petition for Writ of Certiorari, for lack of jurisdiction, stating, inter alia:

"Hence it is the last state tribunal—here the court en banc—to which the cause could be brought for review which is the "highest court of a State in which a decision could be had" within the meaning of the jurisdictional statute, regardless of the particular description or designation which may be applied to it by state statutes.

[4] Upon application to this Court for review of the judgment of a state court it is the petitioner's burden to show affirmatively that we have jurisdiction."

In *Department of Banking vs. Pink*, 317 U.S. 264, 63 S.Ct. 233, this Court denied Petition for Certiorari, for want of jurisdiction, on the ground that it was not filed within the time provided by law. This Court ruled:

"For the purpose of the finality which is prerequisite to a review by this Court, the test is . . . whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court. See Gorman v. Washington University, 316 U.S. 98, 62 S.Ct. 962, 86

L.Ed. 1300. Where the order or judgment is final in this sense, the time for applying to this Court runs from the date of the appellate court's order, since the object of the statute is to limit the applicant's time to three months from the date when the finality of the judgment for purposes of review is established."

When the District Court of Appeal of Florida affirmed the Summary Judgment of Injunction, thereafter denied rehearing and returned the mandate to the lower court, this case had been finally determined in the judicial system of the State of Florida. The Florida Supreme Court had no jurisdiction to review.

The Petition for Certiorari which was filed to the Florida Supreme Court and was denied by it on the ground that that court was without jurisdiction [A-19] was a meaningless and empty gesture. It had no more substance or effect than if a Petition for Certiorari had been filed from the Florida judgment to the Court of Appeals of Alaska. The appellate process was ended on September 11, 1975 and the 90 day period allowed for Petition to this Court began to run from that date.

The Petition was obviously not timely filed and should be dismissed.

POINT II

THE PETITION FOR CERTIORARI SHOULD BE DISMISSED BECAUSE IT IS PATENT THAT NO REAL AND SUBSTANTIAL FEDERAL QUESTION EXISTS OR WAS DETERMINED BY THE FLORIDA COURT.

This Court, from the time of its foundation, has adhered to the principle that it will not review judgments of State courts which rest upon adequate and independent state grounds. This long-standing policy has been scrupulously observed in many decisions of this Court.

Neblett v. Carpenter, 305 U.S. 297,
59 S.Ct. 170
Reh. Den. 305 U.S. 675, 59 S.Ct. 335.

A real and substantial federal question is essential to the jurisdiction of this Court over judgments of State courts.

Abrams v. Van Schaick, 293 U.S. 188,
55 S.Ct. 135.

The Petition for Writ of Certiorari filed herein invokes jurisdiction of this Court pursuant to 28 U.S.C. §1257 (3). Neither the validity of a treaty or statute of the United States nor the validity of a State statute on the ground of its being repugnant to the Constitution, treaties or laws of the United States, is here involved. The basis of the Petition is therefore, necessarily founded on a claim that: "a title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes

of, commission held or authority exercised under, the United States."

The assertion made in the Petition which would have the vaguest reference to the foregoing is the assertion that the Florida judgment would not be given full faith and credit by the Pennsylvania court and is not entitled to recognition by the Pennsylvania court.

That assertion is not sufficient to confer jurisdiction upon this Court. No federal question is thereby presented.

The Florida judgment does not address itself to the Pennsylvania court. The Florida judgment does not purport to tell the Pennsylvania courts what or what not to do. The Florida judgment asserts itself directly against the person of the Petitioner, over whom the Florida court has in personam jurisdiction. It decrees that the property rights of the parties before it were fully and finally determined in their divorce action, rendered by the same Florida court, under Florida law, in that divorce decree, and that they were therefore barred from asserting any further claim or contention with respect to such property rights against each other.

We do not have here a case where the Pennsylvania court has rendered a judgment granting or denying full faith and credit to that Florida injunction. If that were the case, review of such a Pennsylvania judgment, upholding or denying the efficacy of the Florida judgment, would be a proper subject for review by this Court, under the full faith and credit clause of the Constitution.

But the Petition filed herein seeks review only of the Florida judgment per se. That judgment is a purely local

State judgment. Its acceptance or denial under the Constitution's provision for full faith and credit is not an issue. Its enforcement is purely local in scope and is directed against the person of the Petitioner, if she fails to comply with its directives. Under such situations there is nothing for this Court to review.

The validity or error in the weight given by a State court to one of its own judgments in one of its own courts, affecting its own citizens, has been categorically determined to be not the subject of review by this Court because no federal question is involved.

Phoenix Fire Ins. Co. vs. Tennessee, 1896,
161 U.S. 174, 16 S.Ct. 471,
40 L.Ed. 660.

In a case involving review of a Florida judgment, this Court said:

Argersinger v. Hamlin, Fla. 1972,
407 U.S. 25, 38, 92 S.Ct. 2006, 2013:

"We do not sit as an ombudsman to direct state courts how to manage their affairs but only to make clear the federal constitutional requirement."

In a case somewhat relevant in fact to the instant case:

Hicks vs. Corbett, (Cal .1955)
278 P.2d 77,
U.S. Cert. Den. 349 U.S. 965
75 S.Ct. 898.

a Washington Court, in a prior action between the parties, had entered a judgment which included a Finding of Fact that the Plaintiff therein had "no claim, right, title or interest in either the King County [Washington] property or the Santa Barbara [California] property."

Following that judgment in Washington, the Plaintiff therein filed a new suit against the same defendant in California, claiming title to the land which the Washington court previously found he had no claim, right, title or interest in. The California court dismissed the complaint on the ground that the relief sought therein was barred by the previous Washington's court's judgment. The California court held:

"Thus, it is obvious that the subject matter of the Washington action was not the title to California real estate — it was not an in rem action concerning California property. The Washington action was an in personam action — the subject matter was the contract of exchang and the rights of the parties thereunder. Certainly the Washington Court had jurisdiction of the parties and of the contract".

Under the Full Faith and Credit clause of the U.S. Constitution, art. 4, §1, such a decree of the Washington court must bar a re-litigation of the parties' contractual rights in the California courts."

The significant note in the above case is the fact that this Court denied a Petition for Certiorari on that ruling, which is very close in fact and law to the factual situation in the instant case.

POINT III

THE FLORIDA COURT'S JUDGMENT OF DIVORCE WAS CONCLUSIVE ON THE QUESTION OF THE PROPERTY RIGHTS OF THE PARTIES THERETO, AND RES JUDICATA THEREOF; AND A SUBSEQUENT FLORIDA INJUNCTION AGAINST FURTHER LITIGATION IN ANOTHER STATE INVOLVING CLAIMS TO THOSE SAME PROPERTY RIGHTS IS PROPERLY ISSUED, WHERE THE FLORIDA COURT HAS IN PERSONAM JURISDICTION OF THE PARTIES.

The Final Judgment Dissolving Marriage [A-1] establishes:

(a) That the original action for divorce was instituted by Petitioner against Respondent and that Petitioner's action specifically included a demand for "adjudication of her claim of property rights in various real properties and shopping centers in and around the City of Philadelphia, Pa." [A-1]

This was a claim which was filed long prior to the institution of her subsequent litigation in Pennsylvania for the same relief.

(b) Respondent filed a counter-claim for divorce which likewise included a demand:

"That the court determine the rights and interests of the parties in and to their real and personal property." [A-2]

(c) Eight days before trial, on November 29, 1971, the Petitioner dismissed her complaint for divorce and demand for adjudication of her claim to the Pennsylvania property and substituted an action solely for separate maintenance. That Order of Dismissal, however, "specifically preserved for adjudication the issues raised by husband's counterclaim." Consequently, the question of property rights of the parties was definitely before the court at all times and never withdrawn. [A-2]

(d) The judgment contained specific FINDINGS OF FACT, which included:

"5. . . . in addition to his interest in that residence, and its contents, the husband is the owner of a number of properties consisting of improved and unimproved real estate in Philadelphia, Pa., as designated and legally described in Plaintiff's Exhibit 1 filed in evidence, which was stipulated to have a net value in excess of $1,000,000.00." [A-3]

(e) A substantial award of alimony was made to Petitioner. [A-5]

Following the entry of the judgment of divorce, Respondent filed an action for an injunction which is sub

judice. During intermediate proceedings in this action, the trial judge (who was the same judge as had rendered the original judgment dissolving marriage) made the following statement:

> "(a) Both parties, here and there, were well aware that failure to adjudicate these property rights in a final judgment dissolving a marriage might bring into effect an adjudication thereof by operation of law"; [A-8] and
>
> (b) In said dissolution action, the undersigned having rendered said judgment, the Pennsylvania property for the purpose of the dissolution was conceded to be in the name of the husband, (Plaintiff here); [A-8] and
>
> (c) The court, upon the evidence, did consider the husband's assets in determining alimony and child support to be paid by the husband." [A-8-9]

The District Court of Appeal of Florida, on Interlocutory Appeal in the injunction suit, rendered its opinion [A-11], wherein it established the law of the case which resulted in the summary judgment of injunction [A-14] which was thereafter rendered by the lower court and affirmed on appeal [A-17] by the District Court of Appeal.

In its opinion on Interlocutory Appeal the Florida District Court of Appeal made a specific determination:

> "After a close reading of the final judgment of dissolution, it is clear that the property rights

> of the parties conclusively were determined and settled therein. It is equally clear that the amount of alimony awarded the defendant-appellee, ex-wife, was predicated upon the court's finding that appellant owned the Philadelphia properties and the annual income he derived therefrom. Thus, we reverse the Order striking the portions of appellant's complaint cited hereinabove [the portions stricken were those which alleged that the judgment of divorce was res judicata on the question of property rights] and remand the case for further proceedings not inconsistent herewith." [A-13]

From the foregoing, it is clear that the District Court of Appeal actually predicated its decision, which was adopted by the lower court and reaffirmed by it on appeal, upon the fact that the final judgment of divorce on its face shows a specific Finding of Fact based on the evidence to the effect that all property rights of the parties had been conclusively determined and settled therein.

Certainly Findings of Fact in State courts are not subject to review by this Court.

Petitioner's premise of error is, basically, predicated upon a misinterpretation of *Fall vs. Easton*, 215 U.S. 1, 30 S.Ct. 3.

Fall vs. Easton, does not support Petitioner's contention that the injunction issued against Petitioner by the Florida court should be set aside and is not entitled to full faith and credit under Article IV §1 of the Constitution, as alleged at pages 11 and 12 of the Petition.

Fall vs. Easton is in the first instance, entirely compatible with the case sub judice, and in the second instance, is distinguishable from the case sub judice.

It is distinguishable because it involves facts which are quite distinguishable. Here we have a Florida divorce judgment, being enforced by a Florida Injunction decree rendered against Florida citizens over whom the Florida court has in personam jurisdiction. The fact that a claim of title to land in the State of Pennsylvania is involved is only incidental. No judgment of the Pennsylvania court concerning the Florida injunction is before this Court. No question of full faith and credit being given or denied the Florida judgment by the Pennsylvania court is under consideration. The Florida judgment does not force Florida's policy on the State of Pennsylvania. It is an in personam judgment directed to its own citizens, over whom it has in personam jurisdiction, and is being enforced within the State of Florida by the Florida court.

Fall vs. Easton, is quite a different case. The court specifically stated the question there to be:

> "The question in this case is whether a deed to land situate in Nebraska, made by a Commissioner under the decree of a court of the State of Washington, in an action for divorce, must be recognized in Nebraska under the due faith and credit clause of the Constitution of the United States."

The differences are at once apparent:

(a) A Washington court had actually caused a deed conveying Nebraska land to be executed and recorded in Nebraska; and

(b) It involved the refusal by the Courts of Nebraska to accord full faith and credit to the judgment and deed of conveyance issued by the Washington court.

Neither of the foregoing are present in this case.

Fall vs. Easton limited its decision to the square facts before it. The court stated:

> "The question is in narrow compass."

This Court further noted that even the Nebraska court had conceded the jurisdiction of the Washington court in the original divorce case to have directed the husband to make the deed to his wife of the Nebraska land. If that had been done, and the husband had obeyed that Order and made such a deed of conveyance, "even under the threat of contempt proceedings, or after duress of imprisonment," the Nebraska court would not have challenged the authority of the Washington court. The challenge was made and sustained because of the execution of a deed by the Washington court directly transferring the title to the Nebraska land. That, and that only, was held to be decided by the judgment of the Washington court.

There are two active corollary principles of law involved. They are ancient and honored principles firmly and universally imbedded in our jurisprudence.

Petitioner has elected to quote, at page 8 of the Petition, a paragraph of the Opinion in *Fall vs. Easton:*

> "The territorial limitation of the jurisdiction of courts of a state over property in another state has a limited exception in the jurisdiction of a court of equity, but it is an exception well defined. A court of equity, having authority to act upon the person, may indirectly act upon real estate in another state, through the instrumentality of this authority over the person."

Petitioner's basic premise herein is based upon an erroneous interpretation of that case.

Fall vs. Easton espouses the right of the State acting upon the person of the defendant, and not upon land situate in a foreign state, to rule upon property rights, as they did in the case sub judice. So, in *Fall vs. Easton*, the court continued:

> " . . . the doctrine which we have expressed, which rests, as we have said, on the well-recognized principle that, when the subject matter of a suit in a court of equity is within another state or country, but the parties within the jurisdiction of the court, the suit may be maintained and remedies granted which may directly affect and operate upon the person of the defendant, and not upon the subject-matter, although the subject-matter is referred to in the decree, and the defendant is ordered to do or refrain from certain acts toward it, and it is thus ultimately but indirectly affected by the relief granted. In such case, the decree is not of itself legal title, nor does it transfer the legal title. It must be executed by the party and obedience is compelled by

> proceedings in the nature of contempt, attachment, or sequestration. On the other hand, where the suit is strictly local, the subject-matter is specific property, and the relief, when granted, is such that it must act directly upon the subject-matter, and not upon the person of the defendant, the jurisdiction must be exercised in the state where the subject-matter is situated."

The case before this Court falls squarely within the "well recognized exception" defined in *Fall vs. Easton.* The injunction is an in personam decree operating upon a party over whom the court has personal jurisdiction. Obedience may be compelled by contempt proceedings within the State of Florida. The decree does not directly affect the title to the property in Pennsylvania. It is not a muniment of title.

Petitioner's reliance upon *Sharp vs. Sharp,* (Okla. 1916) 166 P. 175, *Barber vs. Barber,* [inaccurately referred to in the Petition as Barker vs. Barker] (Cal. 1958) 331 P. 2d 628, and *McRary vs. McRary* (N.C. 1948) 47 SE 2d 27, is not supportable.

Sharp vs. Sharp is a maverick case which erroneously interprets *Fall vs. Easton. Sharp vs. Sharp* is against the weight of overwhelming authority and is not good law. It should carry no weight whatsoever.

In *Sharp,* the Oklahoma court ruled that an Oregon court, having in personam jurisdiction over the parties, which decreed that the Plaintiff was the owner of specified real property in the State of Oklahoma, had not rendered a judgment in personam, insofar as the real estate was

concerned, but had rendered a judgment in rem, which was void.

Parenthetically, the Oklahoma court did recognize, although it did not apply, the principle of law that:

> "A court of chancery acting in personam may by its decree adjudicate the rights of the parties before it, even though such rights relate to lands in another state, but it may only make such decree effective by requiring, through process for contempt or otherwise, a conveyance by the party of the lands in question, thus indirectly affecting the title to the land in the foreign state, but it has no power by mere force of its decree to establish the title to such lands, or, in the absence of a conveyance by the party, to direct its master commissioner to execute a deed in his stead."

In *Barber vs. Barber*, the California court declared the universal principle under which this case was decided by the Florida court. But the California court ruled that because of the peculiar application of that principle unique to Oklahoma, as exemplified by *Sharp vs. Sharp*, that the California court would not recognize an Oklahoma decree, although it would recognize a decree of another state to like effect. This is clearly indicated in its opinion:

> "The next question is whether binding effect must likewise be given to the portion of the Oklahoma decree dealing with the real property. It is settled in California that a court having jurisdiction of the parties may adjudicate their rights to land located in another state and that the ad-

judication is res judicata and is to be accorded full faith and credit in the situs state regardless of whether the decree orders execution of a conveyance. Rozan vs. Rozan, 49 Cal. 2d 322, 330 et seq. 317 P. 2d 11. Although such a decree cannot in itself change or determine title, and while a subsequent action for that purpose must be brought in the situs state, an adjudication, for example, that one of the parties is entitled to the property is binding in the subsequent action. The rule of the Rozan case, however, cannot properly be applied to a judgment which may be collaterally attacked in the rendering state on the ground that it is void for lack of jurisdiction. Under Oklahoma law, even though a court has jurisdiction of the parties, its adjudication of their rights to land in another state is not res judicata but is void for lack of jurisdiction of the subject matter and may be collaterally attacked and set aside by the parties at any time. Sharp v. Sharp, 65 Okl. 76, 166 P. 175, 177 et seq. L.R.A. 1917 F. 562. Thus the provision of the Oklahoma decree relating to the real property would not be binding there, and it should not be given that effect here."

McRary v. McRary (supra) the third case relied upon by Petitioner is clearly distinguishable. In that case an Ohio court rendered a divorce decree which included a direction that the decree itself should operate as a conveyance of real property located in North Carolina.

The North Carolina court very properly rejected an attempt to use that decree as a muniment of title and declared the law:

"The familiar principle that a court having jurisdiction of the parties may, in a proper case, by a decree in personam, require the execution of a conveyance of real property in another state, or some other act in respect thereto, and to enforce its order through its coercive jurisdiction or authority is not here involved. The plaintiff seeks to establish the Ohio judgment as a muniment of title and to recover the locus on the strength thereof. That raises the question of the validity and efficacy of the Ohio decree as a judgment affecting the title and right of possession to land in North Carolina.

* * * * *

"[12] By means of its power over the person of the parties before it, a court may, in proper cases, compel them to act in relation to property not within its jurisdiction, but its decrees do not operate directly upon the property nor affect its title. The court's Order is made effectual only through its coercive authority."

The case of *Sharp vs. Sharp*, which constitutes the principal authority upon which Petitioner relies was a state court decision which was not reviewed by this court.

On the other hand, the case of *Allis vs. Allis* (U.S.C.A. 5th Cir. 1967) 378 F.2d 721, is a case which is squarely in point with the case sub judice. In addition thereto, a Petition for Certiorari was addressed to this court in the case of *Allis vs Allis and* certiorari was denied, 389 U.S. 953, 88 S.Ct. 1337. In view of this court's denial of certiorari, on facts in *Allis vs. Allis*, which are strikingly like those in

the case sub judice it would seem that this court would likewise deny certiorari in this case involving the same facts.

It will be noted that in this case, Mr. Simon was the owner of the property in Pennsylvania. No Order requiring any conveyance was necessary in order to vest title in him. A judicial determination of his ownership was made by the Florida court as a finding of fact.

Exactly that situation occurred and was noted in *Allis vs. Allis.*

In *Allis vs. Allis*, supra, a wife brought an action in the Texas courts for the purpose of establishing a claim by her of a special interest or equity in Texas realty. Her action was dismissed by the Texas court on the ground that she was estopped to bring suit in Texas to relitigate the question of title because that issue had been previously decided in favor of her husband in a Nevada divorce judgment, in which a *Finding of Fact* had been made that the property was owned by the husband. On appeal, that decision was affirmed by the U.S. Court of Appeal, 5th Circuit, the court stating:

> "Looking initially to matters of form, *it is apparent that the decree before us*, unlike that involved in McElreath, *fails to contain the readily recognizable in personam order directing the execution of a conveyance. It simply provides that the Collin County realty "was* at the time it was transferred by Plaintiff to Western Farms, Ltd., *the sole and separate property of the Plaintiff*, and such conveyance to Western Farms, Ltd., was a valid and effective conveyance."

"The absence of an express order to convey does not appear at all extraordinary, however, in view of the Nevada court's determination that title to the realty in dispute had at all times remained in appellee Allis. Under such circumstances, any order requiring appellant to convey title or to execute a release to appellee Allis of any interest she might claim in the realty would have been superfluous. * * *

Both spouses personally appeared in the Nevada proceedings, voluntarily subjecting themselves to the in personam jurisdiction of the Nevada court. In her counterclaim, appellant affirmatively invoked the power of that court to award the divorce to her and to adjudicate her interests in the marital property."

* * *

"As pointed out in the original opinion, if there be any semblance of fairness achieved in settling the property rights of divorcing persons holding property in two or more states, it must be done by a court operating in one jurisdiction. The problem cannot be adequately solved by the piecemeal attempts of several courts in several states."

Allis vs. Allis, (U.S.C.A. 1967) 378 F.2d 721, cert. den. 389 U.S. 953, 88 S.Ct. 337.

The controlling relationship between the facts in *Allis vs. Allis* and the facts in this case at bar are obvious. Respondent's counter-claim had affirmatively prayed adjudication of the rights and liabilities of the parties in their real and personal property;—the final judgment of divorce [A-1] affirmatively shows that the action proceeded to trial upon (among other things), the husband's counterclaim for "adjudication of the rights and interests of the parties in and to their real and personal property" and made a positive determination as a "Finding of Fact" with respect thereto. As stated in *Allis:* "under said circumstances [that title to the real property was already vested in the husband], any order requiring appellant to convey title or to execute a release . . . of any interest she may claim in the realty would have been superfluous."

It is submitted that the decision of the U.S. Court of Appeals, 5th Circuit, in *Allis v. Allis*, to which this Court denied certiorari, represents the overwhelming majority approach and overrides the decision of the Oklahoma Court in *Sharp v. Sharp*, which is the sole support relied upon by Petitioner.

In the following cases the court where the land was located specifically accepted *Findings of Fact* made in prior litigation between the parties by the court of another state and held such *Findings of Fact* to be res judicata and binding upon the parties in the state where the land was located:

McElreath vs. McElreath, (1961) 162 Tex. 190, 345 SW 2d 722, (where the Texas court held that *Findings of Fact* in an Oklahoma Divorce Decree were res judicata with respect to Texas land);

Rozan vs. Rozan (1957) 49 Cal.2d 322, 317 P.2d 11, which recognized that a California Divorce Decree would be entitled to res judicata effect in North Dakota to the extent that it determined the rights and equities of the parties with respect to North Dakota land. Subsequently, the same parties litigated the same question in North Dakota in a case reported as *Rozan v. Rozan*, (1964, N.D.) 129 NW 2d 694, wherein it was held by the North Dakota court that the *Findings of Fact* by the California Divorce Court that certain North Dakota property was acquired with community property funds was res judicata of that issue and was conclusive, in a North Dakota action, upon those parties who had been parties to the California action.

MacDonald vs. Dexter (1908) 234 Ill. 517, 85 NE 209, in which the Illinois court, applying the doctrine of res judicata, held that in Illinois proceedings involving Illinois land, a prior Missouri judgment in which the Missouri court found that plaintiff had no interest in the Illinois lands was binding upon him.

In *Dunlap vs. Byers* (1896) 110 Mich. 109, 67 NW 1067, it was held that the *findings* of an Ohio court that Michigan lands were partnership assets, were entitled to res judicata effect in subsequent Michigan proceedings.

A considerable number of additional cases of like effect are reported in the Annotation in 32 ALR 3rd 1338, et seq.

There is no question but that the power of the Florida court in a divorce action to determine the rights of parties, over whom it has personal jurisdiction, in their property, is not limited to property located in the state of Florida, but extends to all of their property, situate within or without the State of Florida.

The rule was announced at an early date in the State of Florida in the case of *Winn vs. Strickland* (Fla. 1894) 34 Fla. 610, 16 So. 606, wherein the Florida Supreme Court specifically asserted and adopted the universally accepted right of a court of equity having in personam jurisdiction over the parties, to render decisions in personam which will indirectly affect such title to foreign property. This was done by the lower court in the Final Judgment between the parties to this case.

> "When a court of chancery has acquired jurisdiction over the person of a party, in a proper case, it may, by virtue of its power to coerce obedience to its decrees, enforce the performance of contracts relating to lands situated in another.
>
> * * *
>
> "Although the decree in such case cannot of itself operate to transfer the title to lands situated out of the state, yet it is binding upon the consciences of the parties, and may conclude him in respect to all matters properly adjudicated and determined by this court. Such is the effect given to foreign judgments and decrees by the constitution of the United States in providing that full faith and credit shall be given to each state to the judicial proceedings of another state, and the

act of congress directing the manner in which such proceedings shall be proved, and the effect thereof."

Winn vs. Strickland, supra.

The State of Florida has, likewise, recognized the authority of courts of other states to adjudicate the rights of parties before them to Florida real estate and has held that such foreign adjudication is res judicata in a subsequent suit between the parties in Florida.

So, in *Jones vs. Jones*, (Fla.App. 1962) 140 So.2d 318, an action was brought in Florida by a former wife against a former husband, to establish a resulting trust in Florida property owned by the husband. Her action in Florida was based upon her claim that her former husband had acquired his interest in this Florida property with her money and for her. Prior to the Florida action, the parties had been divorced in the State of Kentucky.

No claim was made by the wife, and *no disposition was made by the Kentucky court in that divorce case of the Florida property which was held in the name of the husband.* The parallel to the instant case now pending before this court appears clear.

In the *Jones* case, the action brought in Florida by the wife, after the final decree of divorce rendered in Kentucky, was dismissed by the Florida court, which said:

"The divorce decree rendered in Kentucky . . . settled the property rights of the parties and barred this subsequent suit brought by the wife

to determine the question of property rights. That proposition is well settled under the law of Florida as well as in Kentucky. (citing many Florida and Kentucky cases.)"

A major annotation, entitled "POWER OF A DIVORCE COURT TO DEAL WITH REAL PROPERTY LOCATED IN ANOTHER STATE" is published in *34 ALR 3rd 962 through 987.*

The final contention of Petitioner, that the Florida judgment would not be entitled to full faith and credit, is contrary to the established law.

It is axiomatic that a valid decree entered in a divorce between parties over whom the court has personal jurisdiction, is entitled to full faith and credit, and facts established in that decree, the time for appeal of which has expired, are res judicata in a foreign state.

It is further axiomatic that the laws of Florida must be applied in construing the construction, operation and effect of the Florida judgment of divorce, by the courts of a foreign state.

The basic rules of construction and recognition of foreign divorces is stated:

"In general, the construction, operation, and effect of a foreign divorce decree are governed by the laws of the jurisdiction in which it was rendered. Accordingly, a decree of divorce will be given the same effect in any court within the United States as it has in the jurisdiction where it was rendered."

27 B CJS 857 (Div. §367)

There is a plethora of decisions, from practically every jurisdiction, which uniformly apply the principle stated. The following cases are representative:

Beebe vs. Brownlee, (1951 Ohio)
62 Ohio L. Abs. 377, 110 NE 2d 64
Affd. 63 Ohio L. Abs. 380, 381, 109 NE 2d 528;

Bowen vs. Bowen, (Iowa 1935) 258 NW 882;

Bozarth vs. Bozarth (La. 1967) 199 So.2d 344;

Cuevas vs. Cuevas, (Miss. 1966) 191 So.2d 843;

Ehrlich vs. Cohn (NY 1955) 145 NYS 2d 117;

Foster vs. Foster (Pa.) 70 Pa. Dist. & Co. 485
27B CJS 862;

Higgenbotham vs. Higgenbotham, (1966)
92 NJ Super 18, 222 A 2d 120;

Higgins (So. Dak. 1932) 245 NW 397;

Jones vs. Jones (Fla. 1962) 140 So.2d 318;

Kram vs. Kram (N.J. 1967) 237 A.2d 271;

Scheper vs. Scheper (So. Car. 1923) 118 SE 178;

Travelers Ins. Co. vs. Fields (USD Ct. Ky. 1971)
323 F.Supp. 387;

Wicker vs. Wicker (Nev. 1969) 451 P.2d 715.

In arriving at its ruling in *Cuevas vs. Cuevas,* supra, the Mississippi court stated the controlling principles of law which are applicable in this case:

> *"Inevitably cases will arise where property, real and personal, upon which those rights and obligations operate as between the parties themselves, in personam, will be situated in a state other than the forum state. The court having jurisdiction of the parties and of the marital res, may, and should, as between them, determine their legal rights and obligations with respect to such foreign property, although the court of the forum is without jurisdictional power to act directly upon title to foreign real estate. The final judgment of the forum court in such a case operates in personam, and is conclusive upon the parties in subsequent actions between them. It may form the*
>
> *basis of a suit in the state of the real property situs for enforcement by the courts of that state of the rights determined and declared in the original action which arose out of the marital relationship. In such event, the doctrine of collateral estoppel will operate to prevent relitigation of issues in the former suit, and, in a proper case, a judgment or decree will be entered by the court of the situs state based upon the foreign judgment and giving it effect."*
>
> *Cuevas v. Cuevas,* (Miss. 1966) 191 So.2d 843

So, also, in *Hick vs. Corbett* (1955) 130 Cal. App.2d 87, 278 P.2d 77, Cert. Denied, 349 U.S. 965, 72 S.Ct. 898,

this Court denied certiorari of a ruling by the California court, where the land was situated, that a Washington Court's judgment and Finding of Fact that plaintiff had no title or interest in California property, was res judicata so as to preclude the subsequent California action.

Whether or not the doctrine applied by the Florida court is "repugnant to Pennsylvania policy" as alleged by Petitioner at Page 14 of her Petition, is completely immaterial.

Petitioner specifically concedes that:

> "Florida law requires property claims between spouses be determined at the time of a divorce." [A-14]

That concession exposes the basic fallacy of Petitioner's position herein. The parties submitted themselves to the jurisdiction of the Florida court, from which court they sought a divorce. They were citizens and residents of Florida at that time, and they still are. The court had in personam jurisdiction over their persons and the parties were subject to all of the laws of Florida involved in a divorce action in that state. One of those laws, long embedded in the jurisprudence of Florida and, in fact, also recognized and applied in countless other state jurisdictions throughout the country, was re-stated by the District Court of Appeal in its opinion filed April 2, 1974 [293 So.2d 780], wherein it said:

> "The rule is firmly established that as in the case sub judice where the court has acquired jurisdiction to adjudicate property rights, a final dissolution of marriage judgment settles all property rights of the parties and bars any action thereafter by either party to determine property rights. Finston v. Finston, 160 Fla. 935, 37 So.2d 423 (1948); Smith v. Bollinger, Fla. App. 1962, 137 So.2d 881; Jones v. Jones, Fla. App. 1962, 140 So.2d 318; McEachin v. McEachin, Fla. App. 1963, 154 So.2d 894; Thompson v. Thompson, Fla. App. 1969, 223 So.2d 95; Henderson v. Henderson, Fla. App. 1969, 226 So.2d 699; Vandervoort v. Vandervoort, Fla. App. 1973, 277 So.2d 43. In addition, property claims must be put into issue in the dissolution of marriage action since the doctrine of res judicata is applicable even where property rights are not put into issue, if the issue could have been raised. Finston, supra; Cooper v. Cooper, Fla. 1954, 69 So.2d 881." [A-12-13]

Petitioner was aware of that law at the time of the trial of her divorce suit. After invoking the jurisdiction of the Florida court in the first instance, she attempted to escape the application of Florida law resulting therefrom, by changing her cause of action eight days before trial from one for divorce, [which required determination in the divorce action of all property claims between the parties] to one for separate maintenance, [which did not].

The Court allowed the withdrawal of Petitioner's action for divorce, as above indicated, but expressly reserved to Respondent all of his rights under his counter-claim for divorce in that same case. The Court thereby expressly preserved the court's jurisdiction to adjudicate all of the parties property rights within the divorce action which was pending before it.

The trial judge noted that the Petitioner was:

> ". . . well aware that failure to adjudicate these property rights in a final judgment dissolving marriage might bring into effect an adjudication thereof by operation of law." [A-8]

Petitioner elected to refuse to give testimony of her property claim in that Florida divorce case because (as she notes in her Petition at page 14) there is a difference between the law of Pennsylvania and the law of Florida with respect to property claims against each other of parties to a divorce. Petitioner elected to go court shopping and withheld the proof of her contention in the Florida divorce trial. It comes with bad grace from Petitioner to allege, as she does at Page 15 of the Petition:

> "And, in this connection it is no answer to state she had her chance to raise these issues in Florida and by failing to do that has now forfeited her claims, especially where it appears the trial judge denied she might litigate the issues in question and subsequently refused an amendment for the issues to be framed."

This is yet another extravagant distortion of the truth by Petitioner. The trial court never denied Petitioner the right to litigate the issues in question. Petitioner withdrew her claim, but the Final Judgment dissolving Marriage reveals that the Respondent's counter-claim expressly raised issue to determine all the rights and interests of the parties in and to their real and personal property, and the action proceeded to trial on that issue. [A-2]

As was stated by this Court in *Sherrer v. Sherrer*, (1948) 334 U.S. 343, 68 S.Ct. 1087, in words which fit exactly into the position of Petitioner in the instant case:

> "It has not been contended that respondent was given less than a full opportunity to contest the issue of petitioner's domicile or any other issue relevant to the litigation. There is nothing to indicate that the Florida court would not have evaluated fairly and in good faith all relevant evidence submitted to it. Respondent does not even contend that on the basis of the evidence introduced in the Florida proceedings, that court reached an erroneous result on the issue of petitioner's domicile. If respondent failed to take advantage of the opportunities afforded him, the responsibility is his own. We do not believe that the dereliction of a defendant under such circumstances should be permitted to provide a basis for subsequent attack in the courts of a sister State on a decree valid in the state in which it was rendered."

Sherrer v. Sherrer, supra at 1091.

CONCLUSION

It is respectfully submitted that:

(a) The Petition for Certiorari should be dismissed; or

(b) Certiorari should be denied.

Respectfully submitted,

JACK D. BURRIS
Attorney for Respondent
420 Lincoln Road
Miami Beach, Florida 33139

MEEHAN and STOELKER
Of Counsel
1400 South Penn Square
Philadelphia, Pa. 19102

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the above and foregoing was mailed this 13th day of July, 1976 to Michael H. Egnal, 1315 Walnut Street Bldg., Philadelphia, Pennsylvania 19107.